

Message Text

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C O N F I D E N T I A L HONG KONG 1981

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TAGS: PFOR CH HK PORG

SUBJ: HUMAN RIGHTS REPORTING: THE SITUATION IN HONG KONG

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1. AS A COLONY OF BRITAIN, HONG KONG IS GOVERNED BY LAWS DERIVED FROM AND/OR PATTERNED AFTER THOSE OF THE UNITED KINGDOM. THE STATUTES AND COMMON LAWS OF ENGLAND, WHICH GUARANTEE RESPECT FOR HUMAN RIGHTS AND THE FUNDAMENTAL FREEDOMS, BECAME APPLICABLE HERE THE DAY HONG KONG BECAME A COLONY IN 1843.

2. TODAY, ACCORDING TO THE 1966 APPLICATION OF ENGLISH LAW ORDINANCES, WHICH SUPERCEDES PREVIOUS LEGISLATION:

"THE COMMON LAW AND RULE OF EQUITY SHALL BE IN FORCE IN HONG KONG, SO FAR AS THEY MAY BE APPLICABLE TO THE CIRCUMSTANCES OF HONG KONG OR ITS INHABITANTS AND SUBJECT TO SUCH MODIFICATIONS THERETO AS SUCH CIRCUMSTANCES MAY REQUIRE, SAVE TO THE EXTENT THAT SUCH COMMON LAW OR ANY SUCH RULE OF EQUITY MAY FROM TIME TO TIME BE MODIFIED OR EXCLUDED BY:

(A) ANY ORDER IN COUNCIL WHICH APPLIES TO HONG KONG;

(B) ANY ACT WHICH APPLIES TO HONG KONG, WHETHER BY

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PROVISION OR BY NECESSARY IMPLICATION; OR

(C) ANY ORDINANCE".

THUS, THE MAJOR SOURCES OF LAWS IN HONG KONG, WHICH INCLUDE THE LOCAL LAWS AND ORDINANCES AND DECISIONS OF LOCAL COURTS, ARE DERIVED FROM AND/OR PATTERNED AFTER THOSE OF ENGLAND. THE ONE EXCEPTION IS THE CONSIDERATION GIVEN TO CHINESE LAW AND CUSTOM PARTICULARLY IN SUCH AREAS AS MARRIAGE AND DIVORCE, ETC. HOWEVER, DECISIONS ON APPEALS FROM HONG KONG'S HIGHEST COURT, THE FULL COURT, TO THE JUDICIARY COMMITTEE OF THE PRIVY COUNCIL IN ENGLAND ARE BINDING LOCALLY.

3. RECENT, THE COLONY'S GROWING SOCIAL PROBLEMS AND INCREASING CRIME RATE HAVE AROUSED CONSIDERABLE LOCAL SENTIMENT FAVORING IMPLEMENTATION OF HANGING, WITH ADVOCATES CLAIMING ITS ENFORCEMENT WOULD HAVE A DETERRENT EFFECT ON FUTURE OFFENDERS. HOWEVER, ABOLITION OF CAPITAL PUNISHMENT UNDER THE LAWS OF ENGLAND VIRTUALLY RULES OUT THE LIKELIHOOD OF THE DEATH PENALTY BEING ENFORCED IN HONG KONG. THE GOVERNOR, WHO IS APPOINTED BY THE QUEEN AND DIRECTLY BOUND BY THE LAWS OF THE UNITED KINGDOM, HAS CONSISTENTLY EXERCISED THE PEROGATIVE OF MERCY CONFERRED UPON HIM BY THE LETTERS PATENT.

4. IN ADDITION TO THE CONSIDERABLE FREEDOMS OF SPEECH, WORK, PRESS, ETC., PERSONS IN HONG KONG STILL ENJOY, THE LOWER INCOME INHABITANTS HAVE ACCESS TO LEGAL AID IN CIVIL AND CRIMINAL CASES. THE 1966-67 SPILLOVER OF THE PRC'S CULTURAL REVOLUTION ACTIVITIES INTO THE COLONY, HOWEVER, INCREASED BRITISH CONCERN REGARDING THE MAINTENANCE OF LAW AND ORDER AND LED TO SOME CURTAILMENT OF THE FREEDOM OF ASSOCIATION AND BROADENING OF POLICE POWERS. HONG KONG RESIDENTS DID NOT OPPOSE THESE MOVES WHICH STRENGTHENED THE GOVERNMENT'S HAND IN DEALING WITH LOCAL DISTURBANCES. TODAY, THE MORE EXTENSIVE POWERS GRANTED TO THE POLICE ARE NOT ABUSED AND THE RESTRICTIONS PLACED ON THE FREEDOM OF ASSOCIATION ARE RATHER NARROWLY APPLIED IN MONITORING POLITICAL ACTIVITIES.

5. FROM ITS EARLIEST DAYS UNTIL THE PRESENT TIME, WITH THE EXCEPTION OF THE PERIOD OF JAPANESE OCCUPATION, THE COLONY'S RESPECT FOR PERSONAL FREEDOMS AND HUMAN RIGHTS AS WELL AS ECONOMIC OPPORTUNITIES HAVE DRAWN IMMIGRANTS AND REFUGEES FROM CHINA, WITH ITS GEOGRAPHICAL PROXIMITY GREATLY ENHANCING SUCH AT-

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TRACTIVENESS. BUT IN RECENT YEARS, LOCAL OFFICIALS HAVE MAINTAINED THAT THE COLONY CAN NO LONGER CONTINUE TO ABSORB THE INCREASING STREAM OF LEGAL AND ILLEGAL IMMIGRANTS FROM THE PRC, WHICH IN 1973 ADDED CLOSE TO 70,00 PERSONS TO HONG KONG'S OWN TEEMING POPULATION. BRITISH OFFICIALS HAVE EMPHASIZED THAT SUCH INFLUX POSES A THREAT TO THE COLONY'S PROGRAMS DESIGNED TO IMPROVE THE QUALITY OF LIFE FOR ITS RESIDENTS, AND ESPECIALLY TO SOCIAL WELFARE PROGRAMS. AS A RESULT, HONG KONG GOVERNMENT

OFFICIALS HAVE REVERTED TO PRACTICES WHICH EXISTED IN THE MID -60'S. CHINESE FROM THE PRC WHO ARE APPREHENDED BY HONG KONG POLICE WHILE ATTEMPTING TO ENTER THE COLONY ILLEGALLY (I.E. WITHOUT PRC EXIT-PERMITS) ARE "DENIED PERMISSION TO LAND" AND RETURN TO THE CONTROL OF CHINESE AUTHORITIES. ACCORDING TO HONG KONG OFFICIALS, THE QUESTION OF APPLICATION OF LOCAL LAWS AND THE QUESTION OF DENIAL OF RIGHTS TO NOT ARISE, AS SUCH PERSONS HAVE NOT BEEN ADMITTED INTO THE COLONY AND THUS ARE NOT SUBJECT TO THE EXTENSION AND PROTECTION OF THE LAW OF HONG KONG AND OF BRITAIN. THE NEW POLICY, IN FORCE SINCE NOVEMBER 30, 1974, APPEARS TO HAVE THE SUPPORT OF THE MAJORITY OF THE COLONY'S OWN LARGELY IMMIGRANT POPULACE, ESPECIALLY SINCE IT COMES AT A TIME OF A DOWNTURN IN THE LOCAL ECONOMY.

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